

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) C.A. No. 99-005-SLR
)
DENTSPLY INTERNATIONAL, INC.,)
)
Defendant,)
)

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[PROPOSED] ORDER MODIFYING STIPULATED PROTECTIVE ORDER

WHEREAS, on July 27, 1999, pursuant to Federal Rule of Civil Procedure 26(c)(7), this Court entered the Stipulated Protective Order governing disclosure in this case;

WHEREAS, Paragraph 9 of the Stipulated Protective Order provides as follows:

9. Except as otherwise authorized by this Order, all persons obtaining access to Confidential Information in connection with this action shall use that information only for the preparation and trial of this action, including any appeal and retrial, and shall not use such Confidential Information for any other purpose, including the furtherance of that person's business interests, or in any administrative or other proceeding. Any person found to have made an impermissible use of Confidential Information shall be subject, without limitation, to civil and criminal penalties for contempt of court.

WHEREAS, Paragraph 21 of the Stipulated Protective Order provides as follows:

21. Nothing in this Order shall prevent either party from seeking modification of this Order upon motion duly made pursuant to the Rules of this Court nor shall it prevent a protected person from making a motion, pursuant to paragraph 4 of this Order, duly made pursuant to the Rules of the Court.

WHEREAS, the Third Circuit Court of Appeals found in this case that Dentsply violated Section 2 of the Sherman Act;

WHEREAS, a third-party, Nowak, has filed a lawsuit against Dentsply in the United States District Court for the Middle District of Pennsylvania, in an action entitled *Nowak Dental Supplies, Inc. v. Dentsply International, Inc.*, 1:07-cv-01799 (CCC) (M.D.Pa.) (The “*Nowak Action*”), alleging that Dentsply violated Section 2 of the Sherman Act;

WHEREAS, the *Nowak Action* and the above-captioned case concern common questions of law and fact;

WHEREAS, Nowak has timely moved to intervene for the sole purpose of modifying the Stipulated Protective Order in this case in order to allow Dentsply to disclose to Nowak, for use in the *Nowak Action*, materials designated under the Stipulated Protective Order;

WHEREAS, the relief requested hereby is substantially similar to the motion to intervene brought by third-party Vident, which sought modification of the Stipulated Protective Order to permit disclosure of Confidential Information in an action entitled *Vident v Dentsply International, Inc.*, Case No. SACV 06-1141 PSG (Anx) (C.D.Cal.) (The “*Vident Action*”), which motion was granted by this Court on December 13, 2007 (D.I. 570);

WHEREAS, this Court may properly exercise jurisdiction over any previously entered confidentiality order in this case;

WHEREAS, the United States of America and Dentsply do not oppose Nowak’s Motion to Intervene for the Sole Purpose of Modifying the Stipulated Protective Order nor its proposed modifications;

IT IS HEREBY ORDERED this 1st day of April, 2008 that:

1. Paragraph 9 of the Stipulated Protective Order is amended (as designated by the underlining) as follows:

9. Except as otherwise authorized by this Order, all persons obtaining access to Confidential Information in connection with this action shall use that information only for the preparation and trial of this action, *Vident v. Dentsply International, Inc.*, Case No. SACV 06-1141 PSG (ANx) (C.D. Cal.), and Nowak Dental Supplies, Inc., v Dentsply International, Inc., Case No. 1:07-cv-01799 (CCC) (M.D. Pa) including any appeals and retrials, and shall not use such Confidential Information for any other purpose, including the furtherance of that person's business interests, or in any administrative or other proceeding. Any person found to have made an impermissible use of Confidential Information shall be subject, without limitation, to civil and criminal penalties for contempt of court.

2. Paragraph 10 of the Stipulated Protective Order is amended (as designated by the underlining) as follows:

10. Except as otherwise authorized by this Order, information designated as confidential shall be used only in connection with this action, *Vident v. Dentsply International, Inc.*, Case No. SACV 06-1141 PSG (ANx) (C.D. Cal.), and Nowak Dental Supplies, Inc., v Dentsply International, Inc., Case No. 1:07-cv-01799 (CCC) (M.D. Pa) shall not be disclosed to any person other than the individuals set forth below, may be disclosed only as necessary in connection with this action, *Vident v. Dentsply International, Inc.*, Case No. SACV 06-1141 PSG (ANx) (C.D. Cal.) and Nowak Dental Supplies, Inc., v Dentsply International, Inc., Case No. 1:07-cv-01799 (CCC) (M.D. Pa), to the individuals set forth below, and may be used by those individuals only as necessary in connection with this action, *Vident v. Dentsply International, Inc.*, Case No. SACV 06-1141 PSG (ANx) (C.D. Cal.), and Nowak Dental Supplies, Inc., v Dentsply International, Inc., Case No. 1:07-cv-01799 (CCC) (M.D. Pa):

* * *

(h) members and employees of the firm of trial counsel for Vident and Dentsply in *Vident v. Dentsply International, Inc.*, Case No. SACV 06-1141 PSG (ANx) (C.D. Cal.) and Nowak Dental Supplies, Inc., v Dentsply International, Inc., Case No. 1:07-cv-01799 (Conner) (M.D. Pa), and any other individuals who are entitled access to Confidential Information under a protective order entered in that case that allows no broader dissemination than the dissemination allowed by this protective order.

Dated: 4/1/08



Honorable Sue L. Robinson
United States District Judge